

REMARKS

Claims 87 and 126-132 were pending in the present application. The Examiner indicated that the prosecution of the present application should be on hold to resolve potential issue of interference with U.S. Patent No. 6,365,574 (“the ‘574 patent”), issued to Singer et al. on April 2, 2002, which is now reissue application Serial No. 10/816,376, filed on April 2, 2004 (hereinafter “the ‘376 reissue application”). For the reasons stated below, continued prosecution of the present application to issuance is respectfully requested as the claims of the present application are patentable over the ‘376 reissue application.

The ‘376 reissue application claims azithromycin ethanolate with no concentration limitation. The present application claims a mixture containing substantially pure azithromycin monohydrate hemi-ethanol solvate and optionally mixed with azithromycin dihydrate. Applicants agree with the Examiner that claims of the present application would cover substantially pure azithromycin monohydrate hemi-ethanol solvate alone (with about 80% purity or higher).

Applicants hereby enclose a Rule 132 declaration from Dr. Bruno Hancock, which shows that the claimed substantially pure azithromycin monohydrate hemi-ethanol solvate possess the superior property for tableting over non-substantially pure azithromycin monohydrate hemi-ethanol solvate. Therefore, the pending claims are nonobvious over the ‘376 reissue application because “superiority of a property shared with the prior art is evidence of nonobviousness,” M.P.E.P. § 716.02 (a). Applicants respectfully submit that all pending claims in the present application are allowable over the ‘376 reissue application. Accordingly, continued prosecution and the issuance of a Notice of Allowance are respectfully requested.

CONCLUSION

In view of the Rule 132 declaration and the remarks, further and favorable considerations of the presently pending claims and the issuance of a Notice of Allowance are respectfully requested.

It is believed that no fee is required in connection with the present Amendment. However, if any fees are required, the Commissioner is authorized to charge such fees to our Deposit Account No. 16-1445.

Respectfully submitted,

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